

**California Regional Water Quality Control Board  
Santa Ana Region**

**Cleanup and Abatement Order No. 01-77**

**For**

**West Newport Oil, Armstrong Petroleum Corporation,  
Aera Energy LLC, and Rancho Santiago Partnership  
Newport Beach  
Orange County**

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. West Newport Oil (WNO) operates an oil drilling operation on approximately 400 acres of historic marshlands adjacent to the mouth of the Santa Ana River in Newport Beach, California. The property is owned by Armstrong Petroleum Corporation, Aera Energy LLC and the Rancho Santiago Partnership. WNO, Armstrong Petroleum Corporation, Aera Energy LLC and the Rancho Santiago Partnership are hereinafter referred to in this order as the discharger.
2. In May of 1998, staff from the United States Environmental Protection Agency (USEPA) and a consultant for the discharger completed a jurisdictional determination that delineated areas of the property that are considered to be waters of the United States. This jurisdictional determination found that between 60 to 80 acres of federal jurisdictional waters exist on the 400 acre site. These wetlands are also waters of the State.
3. The Water Quality Control Plan, Santa Ana River Basin, (Basin Plan), adopted by the Board on March 11, 1994, establishes water quality standards for waters of the State in the Region. The Basin Plan identifies the Santa Ana River Salt Marsh, which includes the WNO site, as wetlands and establishes beneficial uses of wetlands. The Basin Plan has identified the beneficial uses of wetlands to include body contact recreation, non-body contact recreation, aquatic habitat, wildlife habitat, and rare and endangered species habitat.
4. The Basin Plan establishes a narrative water quality objective for oil that prohibits discharges of oil that cause a visible sheen on the water. The Basin Plan also includes water quality objectives for toxic substances, such as arsenic, as well as a narrative objective that states, "The concentrations of toxic substances in the water column, sediments, or biota shall not adversely affect beneficial uses."
5. The USEPA May 1998 jurisdictional determination report documents that between 4 to 6 acres of wetland waters of the United States on the site have been filled with discharges of fill and concrete material, since 1994. These discharges have not been permitted by the Corps of Engineers, in accordance with Section 404 of the Clean Water Act (CWA), nor

were they given water quality certification by the Regional Board, pursuant to Section 401 of the CWA. Therefore, these discharges of fill material by the discharger are in violation of Sections 404 and 401 of the CWA and Sections 13260, 13264, and 13376 of the California Water Code (CWC).

6. On January 21, 1999, Regional Board Staff conducted an inspection of WNO and collected soil and water samples from locations throughout, and adjacent to, the site. The inspection was conducted with staff from the Orange County District Attorney's office and the California Department of Fish and Game.
7. The soil and water quality monitoring data from the January 1999 site inspection by Board staff shows that liquid oil waste, mixed with water, has been discharged into unlined pits on site at the base of the bluff. This disposal operation was observed by Board staff.
8. The soil samples collected by Advanced GeoEnvironmental, Inc., (consultants to Orange County District Attorney's office), on January 21, 1999, identified as samples GP3-D4, GP5-D4, GP7-D5, GP7-D8, GP9-D6, and GP9-D8, had concentrations of C8-C32 hydrocarbons, indicative of diesel and petroleum oil waste, ranging from 3,900 to 87,000 mg/kg (ppm). These soil samples were collected from borings adjacent to active waste oil disposal pits and in borings where a ground penetrating radar survey identified anomalies that was suspected to be waste disposal pits that had been filled in by WNO. These soil samples demonstrate that WNO was discharging, and has discharged, waste oil to unlined waste disposal pits on site, without filing a report of the discharge, as required by Section 13260 of the CWC. Further, WNO would not have been permitted to discharge the liquid oil waste into unlined pits. Such pits do not meet the requirements for a land disposal operation contained in Title 23, Chapter 15 of the California Code of Regulations.
9. The water quality monitoring conducted by Regional Board staff at the WNO site shows that on-site surface water drainages that discharge to wetland areas on site and to adjacent wetlands and surface waters around the site contain concentrations of oil and arsenic that exceed water quality objectives in the Basin Plan.
10. The concentrations of oil found in the surface waters on and adjacent to the site were also at levels that may cause toxicity to aquatic organisms that live in these wetlands and surface waters. The surface water samples collected from the WNO site contained concentrations, in the diesel range (C10-C23), ranging from 190 to 820 ppb of total petroleum hydrocarbons. The discharge of this water to wetlands on site and surface waters adjacent to the site violates the Basin Plan objectives for oil, and may violate the objectives for toxicity.
11. Concentrations of arsenic in the surface water samples ranged between 81 to 84 ppb, which exceeds the Basin Plan objective of 36 ppb, established to protect aquatic life.

12. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Order No. 97-03-DWQ, General Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (NPDES Permit No. CAS000001, General Permit), which regulates the discharge of storm water runoff from industrial sites in the State. Order No. 97-03-DWQ exempts mining and oil and gas facilities from the requirements of the permit if there has not been a release of storm water resulting in a discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Parts 110, 117, and 302 at any time after November 1987. Discharges of storm water runoff from oil and gas sites, such as WNO, are not required to be permitted unless the industrial storm water discharge has contributed to a violation of a water quality standard.
13. The discharges of waste and fill material at the WNO site have caused, and/or contributed to, violations of water quality standards, as discussed above. Therefore, the exemption in Order No. 97-03-DWQ does not apply to WNO, and the requirements of Order No. 97-03-DWQ apply to WNO. WNO has not complied with any of the requirements of Order No. 97-03-DWQ, by failing to submit a notice of intent to be covered by the General Permit, which is considered to be a report of waste discharge pursuant to Section 13260 of the CWC. Therefore, discharges of storm water runoff from WNO are in violation of Sections 13260 and 13264 of the CWC.
14. The extent of all the waste disposal areas have not been defined and further investigation is needed to fully characterize the extent of illegal waste disposal at the WNO site.
15. The discharger has discharged oil waste and concrete and earthen fill material into waters of the State, and waters of the United States, in violation of Sections 401, 402, and 404 of the CWA and Sections 13260, 13264, 13272 and 13376 of the CWC. The discharge of these wastes into waters of the State has destroyed beneficial uses of waters of the State and are also in violation of numerous water quality standards and objectives established by the Regional Board in the Basin Plan. The discharge of waste has caused the destruction of at least 4 to 6 acres of wetlands, and may be posing a threat to other beneficial uses of adjacent wetlands and surface waters of the Newport Slough.
16. CWC Section 13260, and its counterpart Section 13376, for waters of the United States, require that any person discharging waste and/or fill material that could affect the quality of the waters of the State, file a report of waste discharge with the appropriate Regional Board. The discharger has not complied with this requirement for any discharges of waste and fill material that have occurred at the site. These discharges of waste and fill material are also in violation of Section 13264, Prerequisites to Discharge, that prohibit any person from initiating a new discharge to waters of the State prior to filing the report of waste discharge required by Section 13260.
17. The discharger has caused or permitted waste to be discharged where it is or probably will be discharged to waters of the State and has created, or threatens to create, a condition of

pollution or nuisance. Therefore, pursuant to CWC Section 13304, it is appropriate to require the discharger to clean up such waste and abate the effects thereof or take other appropriate remedial action.

18. This action is being taken for the protection of public health and the environment, and as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to Section 13304, Division 7, of the California Water Code, West Newport Oil, Armstrong Petroleum Corporation, Aera Energy LLC and the Rancho Santiago Partnership shall:

1. Forthwith cease discharging oil waste, fill material, and other waste in a manner in which state waters are impacted or threatened.
2. By October 1, 2001, submit a workplan acceptable to the Executive Officer for determining the vertical and lateral extent of oil waste discharged at the WNO site. The workplan shall also include a proposal to define the extent of fill material discharged to waters of the State. The workplan must describe any necessary soil borings and monitoring well installations, and soil and water testing needed to define the extent of contaminant migration and impact. The workplan shall describe the locations, depths, construction details, and sampling procedures of all monitoring wells, the target constituents to be analyzed, and the analytical methods to be utilized. The workplan shall include a proposed time schedule for the completion of the fieldwork, and the preparation and submittal of a complete report of the findings and recommendations.
3. Implement the proposed work plan submitted pursuant to No. 2 above, in accordance with the time schedule approved by the Executive Officer.
4. Conduct any additional fieldwork necessary to further define the extent of oil contamination, and fill material discharged to waters of the State, in accordance with the time schedule(s) approved by the Executive Officer, until the extent of contamination and fill material discharged to waters of the State, are fully defined.
5. Within 60 days of being notified by the Executive Officer that it is appropriate to begin cleanup, submit a remedial action plan (RAP) for completing the cleanup. At a minimum, the RAP shall include the following:
  - A plan for restoring wetlands that have been destroyed by the discharger, and to mitigate for the temporal loss of the beneficial uses of these wetlands for the time period of the illegal discharges.

July 12, 2001

- A plan for restoring wetlands that have been destroyed by the discharger, and to mitigate for the temporal loss of the beneficial uses of these wetlands for the time period of the illegal discharges.
  - A plan for the cleanup of the oil waste, that includes an evaluation of all appropriate hydrogeologic parameters.
  - A time schedule for design, construction, startup and operation of all related cleanup activities.
  - A plan and schedule for complying with SWRCB Order No. 97-03-DWQ.
  - A proposal for completion and submittal of quarterly progress reports to the Executive Officer.
6. Implement the proposed RAP submitted pursuant to No. 5 above, in accordance with the time schedule approved by the Executive Officer.

Failure to comply with the terms and conditions of this Order may result in imposition of civil liability, either administratively by the Board or judicially by the Superior Court in accordance with Section 13350, et seq., of the California Water Code, and/or referral to the Attorney General of the State of California for such action as he/she may deem appropriate (CWC Section 13304(a)).

Ordered by:



Gerard J. Phibeau  
Executive Officer

Date: 7-12-01